

In re) Fair Hearing No. 21,052
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Appeal of)

The petitioner appeals a decision by the Office of Vermont Health Access (OVHA) denying his request for prior authorization for surgery. The issue is whether the petitioner meets the medical necessity requirements for surgery.

1. Petitioner is a twenty-three year old individual who receives Vermont Health Access Plan (VHAP) benefits.

2. On or about February 11, 2007, petitioner was assaulted and his nose was fractured. On or about February 16, 2007, the Procedure Report from Dr. J.L. stated that petitioner had "obvious nasal dorsal deviation to the right with obstruction of the left naris." OVHA determined the surgery was medically necessary and covered the cost of the surgery.

3. The surgery was not successful. Petitioner had subsequent surgery on or about February 26, 2007 due to nasal

collapse. OVHA determined the surgery was medically necessary and covered the cost of the surgery.

4. On or about May 21, 2007, Dr. J.L. submitted a request for prior authorization to OVHA for a third nasal surgery. Dr. J.L. supplemented the submission with photographs and other information upon OVHA's request. In his May 15, 2007 notes, Dr. J.L. states that petitioner "is able to breath out of his nose but he has quite altered appearance prior to his accident." Dr. J.L. wrote that he preferred to wait six months after the accident to do a bone graft for dorsum reconstruction.

5. On or about June 6, 2007, OVHA issued a denial stating that the proposed operation was cosmetic and did not meet the criteria for medical necessity.

6. Dr. J.L. wrote OVHA on or about July 19, 2007 stating that petitioner was left with a nasal deformity and partial nasal airway obstruction.

7. A fair hearing request was filed with the Human Services Board on or about August 23, 2007.

8. A hearing commenced on September 27, 2007. At that hearing, petitioner explained that the surgery had been performed earlier in September and that he was seeking reimbursement.

9. The hearing was continued. Issues remained whether the surgery met criteria for medical necessity and, if so, whether OVHA could reimburse the petitioner for his expenses.

10. Petitioner subsequently testified on January 17, 2007 that his situation changed from May 2007 until September 2007. Petitioner explained that his nose collapsed again necessitating the September 2007 surgery and that he thought his doctor sent a modified statement. Petitioner was given time to obtain further information from his doctor and from the hospital. Petitioner submitted the hospital records of the third surgery but no other documentation from his doctor.

11. Petitioner had surgery on or about September 6, 2007 for a nasal reconstruction and opening of airway due to posttraumatic nasal deformity with vestibular stenosis and septal deviation.

ORDER

OVHA's decision is affirmed.

REASONS

Cosmetic surgery is normally not covered by VHAP. OVHA will approve cosmetic surgery when that surgery is "medically necessary". M106, M106.3. The regulation for cosmetic surgery is set out in M615(1) which states, in part:

Cosmetic surgery and expenses incurred in connection with such surgery are not covered. Cosmetic surgery encompasses any surgical procedure directed at improving appearance . . . except when required for prompt repair of accidental injury or the improvement of a malformed body member.

In this case, petitioner's first two requests for cosmetic surgery met the criteria of M615. The first surgery addressed the prompt repair of a fracture and obstruction to petitioner's left nasal passage from an assault. The second surgery was needed because the petitioner's nose had collapsed after the first surgery.

Petitioner's third request for surgery was filed approximately three months after the second surgery. The request notes that petitioner is able to breathe and notes that petitioner's appearance was altered as a result of the fracture and subsequent surgeries. Dr. J.L. did not write that the surgery was an emergency, but that he preferred to wait six months from the time of the assault. In fact, the actual surgery was done approximately six months after the assault.

Petitioner was given an opportunity to supplement the record with more information from Dr. J.L. that would address the "medical necessity" criteria. Petitioner submitted the July 19, 2007 letter from Dr. J.L. and the surgery report but

no other information that addressed why the third surgery was "medically necessary" rather than cosmetic in nature.

Based on the above, petitioner's evidence is not sufficient to show that the third surgery was "medically necessary". In light of the above analysis, there is no reason to reach the issue of whether petitioner can be reimbursed for his costs. Accordingly, OVHA's decision to deny prior authorization is affirmed. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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